

2. Together, Fed. R. Crim. P. 37 and Fed. R. App. P. 12.1 provide a procedure to address this issue. Under Rule 37, where a defendant files a motion that the Court “lacks authority to grant because of an appeal that has been docketed and is pending,” the Court may (1) defer considering the motion, (2) deny the motion, or (3) “state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue.” Fed. R. Crim. P. 37(a). If the Court does so, Pena can then notify the First Circuit, which can then remand the case (while maintaining jurisdiction) so the Court can rule on Pena’s motion. *See* Fed. R. Crim. P. 37(b)-(c); Fed. R. App. P. 12.1(a)-(b); *Maldonado-Rios*, 790 F.3d at 64-65 (“This procedure makes much practical sense. It is both the procedure that the District Court—and the parties—should have followed in this case, and the one that district courts and parties should follow in like cases in the future.”).

3. If the Court is inclined to grant Pena the relief he seeks in his motion for compassionate release, Pena respectfully requests that the Court follow the procedures in Fed. R. Crim. P. 37 and Fed. R. App. P. 12.1 to ensure there is no question about the Court’s authority to grant relief.

For these reasons, Pena respectfully requests that the Court issue an indicative ruling “stat[ing] either that it would grant the [Pena’s motion for compassionate release] if the court of appeals remands for that purpose or that the motion raises a substantial issue.” Fed. R. Crim. P. 37(a)(3).

Respectfully submitted,

ROBERT PENA,

By his attorney,

/s/ Scott Katz

Scott Katz (BBO # 655681)

Scott Katz Law

1600 Providence Highway

Walpole, MA 02081

(617) 545-4488

scott@scottkatzlaw.com

Dated: April 23, 2020

Local Rule 7.1(a)(2) Certification

I certify that I have conferred in good faith with Assistant U.S. Attorney Brian LaMacchia, counsel for the government, but we cannot resolve or narrow the issues in this motion.

/s/ Scott Katz

Scott Katz

Certificate of Service

I certify this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing on April 23, 2020.

/s/ Scott Katz

Scott Katz